GAU 2761 $ #2

P/1318-38

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent Application of

Robert BARRITZ

Date: June 27, 2000

Serial 09/389,858

Group Art Unit: 2761

Filed: September 2, 1999

Examiner: --

For: HARDWARE/SOFTWARE MANAGEMENT, PURCHASING AND
      OPTIMIZATION SYSTEM

Asst. Commissioner of Patents
    and Trademarks
Washington, D.C. 20231

PETITION TO MAKE SPECIAL
UNDER MPEP § 708.02 VIII

Sir:

Applicant, through the undersigned, his attorney,
hereby petitions, pursuant to MPEP § 708.02 VIII, that the
present application be made special.

In support of this Petition, there are submitted a
Declaration by Max Moskowitz, patent attorney of the applicant
reporting upon a search for prior art, and copies of the
references, plus the required fee of $130.

In the event the actual fee is greater than the payment
submitted or is inadvertently not enclosed, or if any additional
fee during the prosecution of this case is not paid, the Patent
and Trademark Office is authorized to charge the underpayment to
Deposit Account No. 15-0700.

It is submitted that all claims in this application are
directed to a single invention. If the Patent and Trademark

Office determines that all claims presented are not directed to a single invention, the undersigned, acting for the applicant, will make an election without traverse, following telephone restriction practice.

The attorneys' report on the search for the prior art describes who made the search, supplies one copy of the references, and submits a detailed discussion of the references, including how the invention is distinguishable from the references.

Grant of the Petition is solicited.
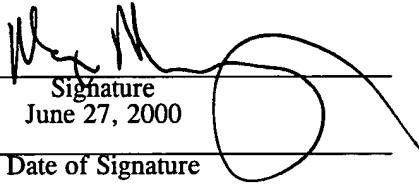
Respectfully submitted,

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Encl.

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D/1318-38

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent Application of

Robert BARRITZ   Date: June 27, 2000

Serial No.: 09/389,858   Group Art Unit: 2761   JUL 1 1 2000

Filed: September 2, 1999   Examiner: --   Group 2700

For: **HARDWARE/SOFTWARE MANAGEMENT, PURCHASING AND
            OPTIMIZATION SYSTEM**

Asst. Commissioner of Patents
.   and Trademarks
Washington, D.C.   20231

<u>**DECLARATION OF MAX MOSKOWITZ**</u>

Sir:

Max Moskowitz declares:

1.   I am registered to practice before the U.S. Patent

and Trademark Office, Registration No. 30,576, and am one of the

attorneys who is empowered to act in the above application.

2.   My declaration is made in support of the

applicant's Petition to Make Special the present application

pursuant to MPEP 708.02 VIII.

3.   I commissioned a search of pertinent prior art by

engaging Charles S. Spencer, a Washington D.C. based patent

searching bureau, and discovered certain art that may be related

to the subject matter of the instant application. Copies of the

most pertinent references located during the search or otherwise

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known to me are enclosed herewith together with a form PTO-1449 as required.

    4.   The relevant patents are listed below:

Patent Nos.:

5,845,078
5,491,791
5,337,258
5,872,909
5,799,193
6,041,182
6,059,842

    5.   The search was conducted through class 714, subclass 47 and class 717, subclass 11.

    6.   In general, the invention manages the costs of a computer data center and allows the creation of scenarios for determining the optimum acquisition, expansion and reconfiguration strategies of such computer data centers. To this end, a knowledge base holds technical information and/or specifications of various storage devices and other computer hardware and a modeling tool allows the creation of various "what-if" scenarios of possible data center configurations for long term projections of the technical and financial requirements of existing modified or proposed data center configurations.

7.   For example, method claim 1 provides for modeling the elements of the data center configuration on a computer; providing a knowledge base of financial information which reflects financial ownership costs of the elements; correlating the knowledge base information with the elements of the configuration and outputting data which enables the assessing of the financial cost of ownership of an actual or contemplated computer data center.

8.   It appears to the applicant's undersigned representative that none of the references provided by the patent searcher that has been engaged for the purposes of this petition, discloses or suggests the invention disclosed in the claims of the present application.

9.   <u>U.S. Patent No. 5,799,193 to Sherman et al.</u> describes a scenario-based system for updating an object oriented system model. Essentially, this document relates to a software development tool which takes hardware configurations into account. As part of the software design, scenarios are utilized to provide information about the desired behavior of a software system. As described at column 4, beginning at line 32: "The present invention is directed to a scenario based method for

developing object oriented system models. Scenarios provide

valuable information about the desired behavior of a system."

However, this document does not deal with and does not disclose

or suggest a substantially automated modeling tool as the present

invention which models the hardware and/or software of an

existing system and which can also model "what-if" configurations

for the purposes of providing total cost of ownership information

as disclosed and incorporated in the claims of the present

application.

       10. <u>U.S. Patent No. 5,845,078 to Tezuka et al</u> is

directed to a network integrated construction system and to a

method of installing network connection machines and setting

network parameters. The emphasis of the description is on the

actual comprehensive construction of the network itself, rather

than the modeling thereof. The idea of the disclosed invention

is to avoid having operators be physically present at

installation sites and at the actual machines which need to be

connected to a computer. This is entirely different from the

present invention, which is a modeling tool of existing or

contemplated network or data center configurations and which has

at its heart the feature of calculating costs of ownership

associated with various data center configurations/scenarios.

11. <u>U.S. Patent No. 5,491,791 to Glowny et al.</u> is somewhat similar to the aforementioned patent in that it is a system for remote workstation monitoring within a distributed computing environment. Although the system of this patent is also an inventorying system of the hardware that is connected in a system, it is not a modeling tool of hardware/software with the capability of calculating cost of ownership over a defined period of time as in the inventions claimed in the present application.

12. Although <u>U.S. Patent 5,337,258 to Dennis</u> is entitled "Cost Metrics," the disclosure thereof is not pertinent to the present invention. The gist of the disclosure concerns calculating the cost of creating printer output in certain configurations. To this end, the printer system contains a timer and evaluator to determine the execution type of a selected set of instructions. From the execution times, a printer model is constructed to predict the execution time for any of a set of instructions. The accumulated data is stored in a log file and used by a resource assembler to calculate the cost of executing a set of user-specified instructions. In contrast, the present invention is a modeling tool of what is essentially an entire computer data center and includes the appropriate knowledge base and similar information that allows the calculation of cost of

ownership and the variations in cost of ownership based on "what-if" scenarios.

13. In the same vain as the foregoing patent, U.S. Patent No. 5,872,909 to Wilner et al. is a logic analyzer for software, the purpose of which is to monitor the execution of a plurality of tasks in the memory of a target computer. The system of this document logs event data representing a plurality of events in a plurality of software environment contexts. No attention at all is given to calculating cost elements.

14. In the system of U.S. Patent No. 6,041,182 to Hart et al. the task of solving apparatus faults is facilitated by allowing a user to enter symptoms based on the user's analysis of the apparatus. In response, the system provides information concerning likely faults with the apparatus. As the systems are entered, the relative value of individual faults is determined and related to the symptoms they cause. The user can then select technical information relating to probable faults in the system. Again, this document does not disclose and is not related to and does not constitute a modeling system as defined in the present claims nor a modeling system with the feature of allowing one to

calculate cost of ownership data over set periods of times for various data center configurations.

15. U.S. Patent No. 6,059,842 to Dumarot et al. describes a method and system for increasing the apparent speed of a computer by automatically optimizing software and hardware according to users specified preferences. Although this document refers to minimizing costs, the emphasis is on the utilization of software and hardware during the use thereof. The "optimization" that is carried out includes the setting of various parameters in hardware, operating system software, or application software such that the system as a whole runs as efficiently as possible. This document, as the others, does not disclose a method and system which is intrinsically a modeling tool of actual or contemplated data center configurations and which allows such configurations to be tested against cost of ownership information in the manner and sense of the claims presented in the instant application.

16. Based upon the foregoing observations about the prior art, it is my opinion that the claims in the present application are allowable over the prior art.

17. I further declare that all statements made herein of my own knowledge are true, except for those statements made on information and belief, which are believed to be true; and further that these statements are made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this declaration, this application and any patent resulting therefrom.

Dated: June 27, 2000
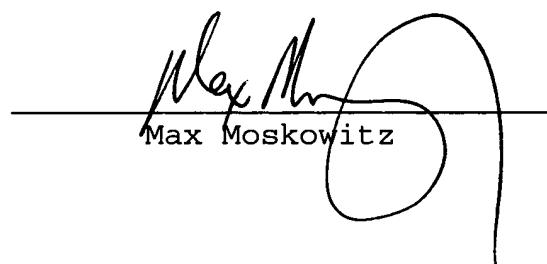
_____
Max Moskowitz

Encl.:   Prior Art References
          Form PTO-1449